

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>ESTELLA A. BOYD</b>	)	
Claimant	)	
VS.	)	
	)	
<b>PRESBYTERIAN MANORS OF MID-AMERICA, INC.</b>	)	Docket No. 163,905
Respondent	)	
Self-Insured	)	
AND	)	
	)	
<b>KANSAS WORKERS COMPENSATION FUND</b>	)	

**ORDER**

Claimant appeals from an Order dated December 18, 1996, which denied claimant's request for temporary total disability compensation and medical treatment.

**ISSUES**

By a previous Order, dated November 14, 1996, the Administrative Law Judge determined that claimant's need for psychiatric treatment was not the result of a work-related injury. Claimant appealed that finding and on December 31, 1996, the Appeals Board issued an Order ruling the Appeals Board did not have jurisdiction to review the finding by the Administrative Law Judge.

On November 23, 1996, while the first appeal was pending, claimant obtained a letter from Joel H. Nance, M.D., stating his opinion that the psychiatric condition was attributable to claimant's work-related injury. Claimant then asked for a second preliminary hearing. The Administrative Law Judge issued a second Order, the one which is the subject of the current appeal, stating that he would not relitigate the issue already decided. The Administrative Law Judge declared there was no reason why Dr. Nance's report was not presented in the earlier hearing and on that basis sustained respondent's objection to a second hearing.

Claimant now appeals this second ruling, and argues the appeal is not subject to the jurisdictional limits on appeals from preliminary hearing found in K.S.A. 44-551. Claimant also

argues that the decision not to hold a second hearing violates constitutional rights of due process. Finally, claimant's counsel asks the Appeals Board to impose sanctions, arguing that the brief filed on appeal by respondent raises frivolous issues.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board concludes that it does not have jurisdiction of the appeal filed by the claimant on this case. The appealed order was issued in response to the request for temporary total disability benefits and medical treatment pursuant to K.S.A. 44-534a. The Order was, in our view, a preliminary hearing order.

For appeals brought from preliminary hearing orders under K.S.A. 44-534a, the Appeals Board has limited jurisdiction. The Appeals Board may consider only those appeals which allege that the Administrative Law Judge has exceeded his/her jurisdiction. See K.S.A. 44-551. This includes appeals which raise issues specifically identified in K.S.A. 44-534a. The issue in this case is in whether an Administrative Law Judge may decline to hold a second preliminary hearing on the grounds that claimant's new evidence could have been available at the time of the first preliminary hearing. The Appeals Board concludes that the challenge to that decision does not raise a jurisdictional issue. The issue is one which the Administrative Law Judge has jurisdiction to determine. The decision also did not, in our view, deny due process.

Claimant's request for sanctions is without merit and is denied.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the appeal filed by claimant in this case should be dismissed and the Order dated December 18, 1996, by Administrative Law Judge Bryce D. Benedict remains in effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March 1997.

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BOARD MEMBER

c: Frank D. Taff, Topeka, KS  
Michael Unrein, Topeka, KS  
Ross A. Hollander, Wichita, KS  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director